

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 535.

JOHN D. ROCKEFELLER, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

FILED SEPTEMBER 15, 1921.

(28,490)



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United States District Court for the Southern District of New York.

L 24-77.

UNITED STATES OF AMERICA, Plaintiff,

against

JOHN D. ROCKEFELLER, Defendant.

To the above-named defendant :

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness the Honorable Learned Hand, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, this 20th day of December, in the year one thousand nine hundred and twenty.

[SEAL.]

ALEX. GILCHRIST, JR.,
Clerk.

FRANCIS G. CAFFEY,
*United States Attorney,
Plaintiff's Attorney.*

Office and Post Office Address, U. S. Court and P. O. Building,
Borough of Manhattan, New York City.

United States District Court, Southern District of New York,

L 24-77.

UNITED STATES OF AMERICA, Plaintiff,

against

JOHN D. ROCKEFELLER, Defendant.

Notice of Appearance.

SIR:

Please take Notice, That the Defendant John D. Rockefeller hereby appears in the above entitled action, and that we are retained Attorneys for him therein, and hereby demand that a copy of the

complaint and of all other papers in this action be served on us at our office below designated.

Dated January 5th, 1921.

Yours, &c.,

MURRAY, PRENTICE & ALDRICH,
Attorneys for Defendant.

Office and Post Office Address, 37 Wall Street, New York City.

To Francis G. Caffey,
Attorney for Plaintiff.

3 [Endorsed:] United States District Court, Southern District of New York. United States of America, Plaintiff, against John D. Rockefeller, Defendant. Notice of Appearance of Defendant John D. Rockefeller. Murray, Prentice & Aldrich, Attorneys for Defendant. Received Jan. 6, 1921. U. S. Attorney's Office. #23153. A. C. Entered.

4 United States District Court, Southern District of New York

L. 24-77.

UNITED STATES OF AMERICA, Plaintiff,

against

JOHN D. ROCKEFELLER, Defendant.

Complaint.

Taxes, Interest, and Penalty under the Act of October 3, 1913.

Francis G. Caffey, United States Attorney for the Southern District of New York, Attorney for Plaintiff.

Office and Post Office Address: U. S. Courts and P. O. Bldg., Borough of Manhattan, City of New York.

5 United States District Court, Southern District of New York

UNITED STATES OF AMERICA, Plaintiff,

against

JOHN D. ROCKEFELLER, Defendant.

Complaint.

Taxes, Interest, and Penalty under the Act of October 3, 1913.

Plaintiff above-named by Francis G. Caffey, United States Attorney for the Southern District of New York, its attorney, complaining of the defendant, alleges upon information and belief:

First. That at all the times hereinafter mentioned plaintiff was and now is a corporation sovereign.

Second. That at all the times hereinafter mentioned defendant was and now is a resident and inhabitant of the Southern District of New York.

Third. That during the calendar year ending December 31, 1915, defendant was the owner and holder of one hundred fifty thousand, three hundred thirteen (150,313) shares of the capital stock of a certain corporation known as The Ohio Oil Company, and on or about the 4th day of February, 1915, said corporation, The Ohio Oil Company, paid to defendant and defendant received a dividend upon said shares of stock held by him in said The Ohio Oil Company; that said dividend consisted of fifty thousand one hundred four and 983383/2950149 (50,104 983383/2950149) shares of the capital stock of a certain other corporation known as The Illinois Pipe Line Company of the par value of One hundred Dollars (\$100.) each.

Fourth. That during the calendar year ending December 31, 1915, defendant was the owner and holder of forty-four thousand, seven hundred eighty-four (44,784) shares of the capital stock of a certain corporation known as The Prairie Oil & Gas Company, and on or about the 25th day of March, 1915, said corporation, The Prairie Oil & Gas Company, paid to defendant and defendant received a dividend on said shares of stock held by him in said The Prairie Oil & Gas Company; that said dividend consisted of sixty-seven thousand one hundred seventy-six (67,176) shares of the capital stock of a certain other corporation known as The Prairie Pipe Line Company, of the par value of One hundred Dollars (\$100.) each.

Fifth. That the par value of said 50,104 983383/2950149 shares of the capital stock of The Illinois Pipe Line Company, received by defendant as aforesaid, was Five million ten thousand four hundred thirty-three and 34/100 Dollars (\$5,010,433.34); that the par value of said 67,176 shares of the capital stock of The Prairie Pipe Line Company received by defendant as aforesaid was Six million seven hundred seventeen thousand six hundred Dollars (\$6,717,600.00), in all the sum of Eleven million seven hundred twenty-eight thousand thirty-three and 34/100 Dollars (\$11,728,033.34).

Sixth. That the market value of said 50,104 983383/2950149 shares of the capital stock of The Illinois Pipe Line Company at the time the same were distributed to defendant by The Ohio Oil Company, and received by him as hereinabove set forth, was Six million six hundred sixty-three thousand nine hundred sixty-five Dollars (\$6,663,965.00); that the market value of said 67,176 shares of the capital stock of The Prairie Pipe Line Company at the time the same were distributed to defendant by said The Prairie Oil & Gas Company and received by him as hereinabove set forth, was Nine million nine hundred forty-two thousand

forty-eight Dollars (\$9,942,048.00), in all the sum of Sixteen million six hundred six thousand thirteen Dollars (\$16,606,013.00).

Seventh. That pursuant to the requirements of the Act of Congress approved October 3, 1913, defendant on or about the 28th day of March, 1916, filed with the Collector of Internal Revenue for the Third District of New York a return purporting to be a true and complete statement of the gains, profits and income received by or accrued to defendant during the calendar year ending December 31, 1915.

Eighth. That said return was incorrect, misleading and false in that, among other items, defendant failed to include therein as part of the gains, profits and income received by or accrued to him during said calendar year any part of said 50,104 983383/2950149 shares of the capital stock of The Illinois Pipe Line Company or any part of said 67,176 shares of the capital stock of The Prairie Pipe Line Company, or the value of said shares, or of any part thereof.

8 Ninth. That thereafter defendant's said return was audited by the Commissioner of Internal Revenue and was corrected by said Commissioner of Internal Revenue by including therein as part of the gains, profits and income received by defendant during said calendar year ending December 31, 1915, together with other items, the par value of all of said shares of stock of The Illinois Pipe Line Company and of The Prairie Pipe Line Company, received by defendant as above set forth, namely, the sum of Eleven million seven hundred twenty-eight thousand thirty-three and 34/100 Dollars (\$11,728,033.34); that on or about the 9th day of July, 1917, said Commissioner of Internal Revenue assessed against defendant an additional tax in the sum of Seven hundred fifty-four thousand seven hundred thirty-seven and 9/100 Dollars (\$754,737.09) of which additional tax the sum of Seven hundred three thousand six hundred eighty-two Dollars (\$703,682.) was assessed upon the par value of said shares of stock.

Tenth. That said additional tax in the sum of Seven hundred fifty-four thousand seven hundred thirty-seven and 9/100 Dollars (\$754,737.09) assessed against defendant as aforesaid was paid by said defendant to the Collector of Internal Revenue for the Third District of New York on or about the 24th day of September, 1917.

Eleventh. That the net income of said defendant for said calendar year ending December 31, 1915, irrespective of said shares of stock received by defendant as dividends as above set forth, was in excess of the sum of Five hundred thousand Dollars (\$500,000.)

9 and by reason of the premises an additional tax in the sum of Two hundred ninety-two thousand six hundred seventy-eight and 78/100 Dollars (\$292,678.78) became due and owing from the defendant to the plaintiff, namely, an additional tax of six per cent on the sum of Four million eight hundred seventy-seven thousand nine hundred seventy-nine and 66/100 Dollars

(\$4,877,979.66) the difference between the market value of said shares of stock at the time the same were distributed to and received by defendant, to wit, Sixteen million, six hundred six thousand thirteen Dollars (\$16,606,013.00) and the par value of said shares of stock, to wit, Eleven million seven hundred twenty-eight thousand thirty-three and 34/100 Dollars (\$11,728,033.34), upon which the tax has been paid as above set forth.

Twelfth. That no part of said additional tax of Two hundred ninety-two thousand six hundred seventy-eight and 78/100 Dollars (\$292,678.78) has been paid, although duly demanded, and the same is now due and owing from said defendant to plaintiff together with a penalty of Five per cent (5%) of the amount thereof and interest on the same at the rate of one per cent (1%) per month from the 30th day of June, 1916.

Thirteenth. That the Commissioner of Internal Revenue authorizes and sanctions these proceedings.

Wherefore plaintiff demands judgment against defendant for the sum of Two hundred ninety-two thousand six hundred seventy-eight and 78/100 Dollars (\$292,678.78) together with a penalty of Five per cent (5%) of said sum, and interest thereon at the rate of one per cent (1%) per month from the 30th day of June, 1916, and for the costs and disbursements of this action.

FRANCIS G. CAFFEY,
*United States Attorney for the
Southern District of New York,
Attorney for the Plaintiff.*

Office and Post Office Address: U. S. Courts and P. O. Bldg.,
Borough of Manhattan, City of New York.

UNITED STATES OF AMERICA,
*State of New York,
Southern District of New York, ss:*

Richard S. Holmes, being duly sworn, deposes and says that he is a Special Assistant to the United States Attorney for the Southern District of New York, and, as such, has charge of the above-entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief and that as to those matters he believes it to be true.

That the reason this verification is made by deponent and not by plaintiff is that plaintiff is a corporation sovereign.

That the sources of deponent's knowledge and the grounds of his belief as to all matters stated in said complaint to be alleged upon information and belief, are certified photostat copies of the tax return and claim for refund heretofore filed by defendant herein,

11 correspondence had with the Commissioner of Internal Revenue and copies of reports of agents of the Bureau of Internal Revenue relative to defendant's income and financial affairs for the year 1915.

RICHARD S. HOLMES,

Sworn to before me this 4th day of December, 1920.

[SEAL.]

CARL BRECHER,
Notary Public, Kings County.

Clerk's No. 466, Register's No. 1213,
N. Y. Clerk's No. 569, Reg.'s No. 1560.
Commission expires March 30, 1921.

12 United States District Court, Southern District of New York.

L 24-77.

UNITED STATES OF AMERICA, Plaintiff,

against

JOHN D. ROCKEFELLER, Defendant.

Amended Answer.

Murray, Prentice & Aldrich, Attorneys for Defendant, 37 Wall Street, Mar.hattan, New York.

13 United States District Court, Southern District of New York.

L 24-77.

UNITED STATES OF AMERICA, Plaintiff,

against

JOHN D. ROCKEFELLER, Defendant.

The defendant above named, by Murray, Prentice & Aldrich, his attorneys, for his amended answer to the complaint herein:

I. Admits the allegations contained in the paragraph of the complaint numbered "Third" that during the calendar year ending December 31, 1915, defendant was the owner and holder of One hundred and fifty thousand three hundred and thirteen (150,313) shares of the capital stock of a certain corporation known as The Ohio Oil Company and that on or about the 4th day of February, 1915, defendant received Fifty thousand one hundred and four and 983-383/2950149 (50,104 983383/2950149) shares of the capital stock of a certain other corporation known as The Illinois Pipe Line Company of the par value of One hundred dollars (\$100) each; alleges that said shares of stock of The Illinois Pipe Line Company were

issued to and received by him pursuant to the proceedings and in the manner and under the circumstances alleged in the further and separate affirmative defense herein; denies each and every other allegation contained in said paragraph of the complaint numbered "Third" and particularly the allegations that said shares
14 of stock of The Illinois Pipe Line Company were paid to the defendant by The Ohio Oil Company and/or received by him as a dividend.

II. Admits the allegations contained in the paragraph of the complaint numbered "Fourth" that during the calendar year ending December 31, 1915, defendant was the owner and holder of Forty-four thousand seven hundred and eighty-four (44,784) shares of the capital stock of a certain corporation known as the Prairie Oil & Gas Company and that on or about the 25th day of March, 1915, defendant received Sixty-seven thousand one hundred and seventy-six (67,176) shares of the capital stock of a certain other corporation known as The Prairie Pipe Line Company of the par value of One hundred dollars (\$100) each; alleges that said shares of stock of The Prairie Pipe Line Company were issued to and received by him pursuant to the proceedings and in the manner and under the circumstances alleged in the further and separate affirmative defense herein; denies each and every other allegation contained in said paragraph of the complaint numbered "Fourth" and particularly the allegations that said shares of stock of The Prairie Pipe Line Company were paid to the defendant by The Prairie Oil & Gas Company and/or received by him as a dividend.

III. Admits the allegations contained in the paragraphs of the complaint numbered "Fifth," "Sixth," and "Ninth," except that defendant denies that the shares of stock of The Illinois Pipe Line Company and The Prairie Pipe Line Company referred to in said paragraphs were paid to or received by defendant in the manner alleged in the complaint, and alleges that said shares of stock
15 were issued to and received by him pursuant to the proceedings and in the manner and under the circumstances alleged in the further and separate affirmative defense herein.

IV. Admits the allegation contained in the paragraph of the complaint numbered "Eighth" that defendant failed to include in his return of the gains, profits and income received by or accrued to him during the calendar year ending December 31, 1915, filed with the Collector of Internal Revenue for the Third District of New York on or about the 28th day of March, 1916, any part of said shares of stock of The Illinois Pipe Line Company or any part of said shares of stock of The Prairie Pipe Line Company or the value of said shares and/or any part thereof; denies that said return was incorrect and/or misleading and/or false in that it failed to include the same, or for any other reason.

V. Admits the allegations contained in the paragraph of the complaint numbered "Eleventh" that the net income of defendant for the calendar year ending December 31, 1915, irrespective of said

shares of stock of The Illinois Pipe Line Company and/or The Prairie Pipe Line Company, was in excess of the sum of Five hundred thousand dollars (\$500,000) and that the difference between the market value of said shares of stock at the time the same were received by defendant and the par value of said shares of stock was Four million, eight hundred and seventy-seven thousand, nine hundred and seventy-nine 66/100 dollars (\$4,877,979.66); denies each and every other allegation contained in said paragraph of the complaint numbered "Eleventh."

VI. Admits the allegations contained in the paragraph of 16 the complaint numbered "Twelfth" that a demand has been made upon him for the sum of Two hundred ninety-two thousand, six hundred seventy-eight and 78/100 dollars (\$292,678.78) and that no payment on account of such demand has been made by him; denies each and every other allegation contained in the paragraph of the complaint numbered "Twelfth."

For a further, separate affirmative defense to the complaint herein, the defendant alleges:

VII. That during the year 1914, the Prairie Oil & Gas Company was a corporation duly organized and existing under and by virtue of the laws of the State of Kansas, and engaged in producing, purchasing and selling crude petroleum and transporting the same by pipe lines owned by it in the States of Kansas and Oklahoma and elsewhere. That at all the times hereinafter mentioned, The Prairie Oil & Gas Company had an authorized capital stock, all of which was issued and outstanding, of Eighteen million dollars (\$18,000,000) divided into One hundred and eighty thousand (180,000) shares of the par value of One hundred dollars (\$100) each.

VIII. That in June, 1914, it was judicially determined by the Supreme Court of the United States that The Prairie Oil & Gas Company was required to operate its pipe lines as a common carrier of oil in interstate commerce and as such was subject to the supervision of the Interstate Commerce Commission of the United States. That by Act of Congress, approved September 26, 1914, practically all of the business of The Prairie Oil & Gas Company, other than the operation of its pipe lines as a common carrier of oil in interstate commerce, was made subject to the supervision of the Federal Trade Commission.

17 IX. That in order to avoid the conflict of Federal authority in the regulation of the business of The Prairie Oil & Gas Company it was upon advice of counsel, considered advisable that the pipe line property be owned and operated by a corporation other than The Prairie Oil & Gas Company. That The Prairie Oil & Gas Company could not under its charter and the statutes of the State of Kansas acquire or hold the stock of a corporation owning and operating the pipe line property. That the stockholders of The Prairie Oil & Gas Company at the regular annual meeting held on December 8, 1914, adopted

the preambles and resolution, a copy of which is set forth in "Exhibit A" annexed hereto and made a part hereof and authorized the organization of a corporation for the purpose of owning and operating the pipe line property.

X. That thereafter and on or about December 8, 1914, pursuant to said resolution, the Board of Directors of The Prairie Oil & Gas Company caused a corporation to be organized under the laws of the State of Kansas, under the name of The Prairie Pipe Line Company with an authorized capital stock of Twenty-seven million dollars (\$27,000,000) divided into two hundred and seventy thousand (270,000) shares of the par value of one hundred dollars (\$100) each, and having authority under its charter to purchase, own and operate a system of pipe lines for the gathering and transmitting of oil, and The Prairie Pipe Line Company, pursuant to resolutions of its Board of Directors, a copy of which is set forth in "Exhibit B" annexed hereto and made a part hereof, offered to acquire the pipe line property owned by The Prairie Oil & Gas Company in consideration of the delivery of all of its capital stock. That said offer of The Prairie Pipe Line Company was accepted by The Prairie Oil & Gas Company at a meeting of its Board of Directors held on January 21, 1915, by the adoption of the preambles and resolution, a copy of which is set forth in "Exhibit C" annexed hereto and made a part hereof.

XI. That thereafter pursuant to said resolutions of the Board of Directors of The Prairie Oil & Gas Company and resolutions of the Board of Directors of The Prairie Pipe Line Company, a copy of which is set forth in "Exhibit D" annexed hereto and made a part hereof, there was executed an agreement dated January 21, 1915, a copy of which is set forth in "Exhibit E" annexed hereto and made a part hereof, which provided for the transfer of the pipe line property to The Prairie Pipe Line Company in consideration of the issue and delivery of all of its capital stock to The Prairie Oil & Gas Company, and which further provided that the pipe line property should include land, rights of way, equipment and working stocks of oil and that if the actual cost of the pipe line property to The Prairie Oil & Gas Company as shown in its investment records should not equal the sum of Twenty-seven million dollars (\$27,000,000), The Prairie Oil & Gas Company should pay to The Prairie Pipe Line Company such sum as might be necessary, when added to the value of such property, to equal the sum of Twenty-seven million dollars (\$27,000,000), and that if the cost of such property to The Prairie Oil & Gas Company as so determined should be in excess of the sum of Twenty-seven million dollars (\$27,000,000) The Prairie Pipe Line Company should pay to The Prairie Oil & Gas Company such excess in cash.

XII. That the Board of Directors of The Prairie Oil & Gas Company, at a meeting held on January 21, 1915, duly adopted the preambles and resolutions, a copy of which is

set forth in "Exhibit F" annexed hereto and made a part hereof, providing for the issue and distribution to the stockholders of The Prairie Oil & Gas Company, pro rata, of all of the capital stock of The Prairie Pipe Line Company.

XIII. That on or about February 1, 1915, the pipe line property was transferred to The Prairie Pipe Line Company and there was paid to it by The Prairie Oil & Gas Company the sum of One hundred and forty-one thousand, three hundred and sixty dollars and thirteen cents (\$141,360.13) in cash and The Prairie Pipe Line Company in accordance with said agreement between The Prairie Oil & Gas Company and The Prairie Pipe Line Company dated January 21, 1915, issued and caused to be distributed to each stockholder of The Prairie Oil & Gas Company a certificate or certificates representing a number of shares of the capital stock of The Prairie Pipe Line Company equal to one and one-half ($1\frac{1}{2}$) times the number of shares of the capital stock of The Prairie Oil & Gas Company standing in his or her name on the stock books of The Prairie Oil & Gas Company on February 9, 1915.

XIV. That upon the transfer of the pipe line property to The Prairie Pipe Line Company the pipe line property was taken up as an asset of The Prairie Pipe Line Company and eliminated as an asset of The Prairie Oil & Gas Company. That the shares of stock of The Prairie Pipe Line Company were at no time entered as an asset of The Prairie Oil & Gas Company. That on January 31, 1915, the following voucher entries were made:

20

	Debit.	Credit.
"The Prairie Pipe Line Company, Separation Account"	\$27,000,000.00	
Being the value of assets sold at close of business January 31st, 1915.		
The Prairie Pipe Line Company.		\$141,360.13

Being the difference between \$27,000,000.00 and \$26,858,638.87, the book value of the property sold to The Prairie Pipe Line Company.

NOTE.—Under the agreement dated January 21st, between The Prairie Oil & Gas Co. and The Prairie Pipe Line Company, it was agreed that in the event that the property sold to The Prairie Pipe Line Company did not equal the sum of \$27,000,000.00, the difference between the ascertained

value and \$27,000,000.00 was to be paid by The Prairie Oil & Gas Company to The Prairie Pipe Line Company in cash.

Investment:

Operated property, consisting of	
Pipe Lines, tanks, etc.....	25,292,378.91
Suspended Investment.....	25,398.91

Crude Oil Sales Account:

Crude Oil in working tanks	2,363,890.35 bbls.	
Less worthless	292,453.10 bbls.	
Merchantable Oil	2,071,437.25 bbls.	
	@ .743519	1,540,152.95
Empty Sacks Account.....		568.60
Prest-O-Lite Cylinder Account ..		20.50
Ammonia Cylinder Account....		120.00
		<hr/>
	\$27,000,000.00	\$27,000,000.00

That the practice of The Prairie Oil & Gas Company was to charge to dividend account the amount of dividends paid and at the end of the year to charge off to profit and loss the amount of dividends paid during the year. That no entry was made in dividend account of The Prairie Oil & Gas Company in connection with this transaction. That there was charged off to profit and loss the sum of Twenty-seven million dollars (\$27,000,000). That on January 31, 1915, the following voucher entries were made:

	Debit.	Credit.
The Prairie Pipe Line Company Separation Account		\$27,000,000.00
Profit and Loss	\$27,000,000.00	

To close "The Prairie Pipe Line Separation Account" into Profit and Loss, being amount of assets sold The Prairie Pipe Line Company at date of organization of latter company.

That the surplus of The Prairie Oil & Gas Company amounted to the sum of Forty million, three hundred sixty-seven thousand, twenty-nine and 69/100 dollars (\$40,367,029.69) on March 1, 1913, the sum of Sixty million, seventy-one thousand, nine hundred twenty-four and 54/100 dollars (\$60,071,924.54) on January 31, 1915, immediately before the transfer of the pipe line property, and

the sum of Thirty-eight million, eight hundred fifty-one thousand, nine hundred seven and 06/100 dollars (\$38,851,907.06) on February 1, 1915, immediately after the completion of the transaction hereinbefore set forth. That on January 31, 1915, the following voucher entry was made:

	Debit.	Credit.
Depreciation on Property.....	\$5,784,992.51	
Profit and Loss.....		\$5,784,992.51

That all of the foregoing voucher entries were subsequently carried into the ledger.

22 XV. That approximately seventy-five per cent (75%) of the pipe line property transferred to The Prairie Pipe Line Company had been acquired by The Prairie Oil & Gas Company prior to March 1, 1913. That during the period of time prior to March 1, 1913, when such pipe line property was acquired, The Prairie Oil & Gas Company had in its treasury funds composed in part of the proceeds of the sale of its stock and bonds then outstanding and in part of earnings, and the money out of which the property in question was acquired was paid from such funds. That if the pipe line property owned by The Prairie Oil & Gas Company on March 1, 1913, and which was transferred to The Prairie Pipe Line Company had any greater value at the time of such transfer than it had on March 1, 1913, the amount of the increase in value was not equivalent to the par value of the shares of stock of The Prairie Pipe Line Company distributed to the stockholders of The Prairie Oil & Gas Company.

XVI. That after the transfer of the pipe line property of The Prairie Oil & Gas Company to The Prairie Pipe Line Company and the issue of the stock of The Prairie Pipe Line Company to the stockholders of The Prairie Oil & Gas Company, the asset or book value of the capital stock of The Prairie Oil & Gas Company was reduced to the extent of the asset or book value of the pipe line property, and the asset or book value of each share of the capital stock of The Prairie Oil & Gas Company was proportionately reduced.

XVII. That prior to the transfer of the pipe line property to The Prairie Pipe Line Company, sales of stock of The Prairie Oil & Gas Company had been made in the open market as follows:

23 January 4, 1915, at 464.
February 1, 1915, at 469.
February 4, 1915, at 465.

That after the transfer of the pipe line property, sales of stock of The Prairie Oil & Gas Company were made in the open market as follows:

February 10, 1915, at 219.
February 24, 1915, at 212.
March 1, 1915, at 224.

That sales of stock of The Prairie Pipe Line Company were made in the open market as follows:

February 10, 1915, at 146.

February 24, 1915, at 138.

March 1, 1915, at 150.

XVIII. That the value of the shares of the capital stock of The Prairie Oil & Gas Company owned by each stockholder, including the defendant, immediately prior to the transfer of the pipe line property to The Prairie Pipe Line Company, was substantially the same as the value of the shares of the capital stock of The Prairie Oil & Gas Company owned by each stockholder, including defendant, plus the value of the shares of the capital stock of The Prairie Pipe Line Company received by each stockholder of The Prairie Oil & Gas Company, including defendant, immediately after such transfer.

XIX. That on March 1, 1913, and on February 9, 1915, the defendant was the owner of 44,784 shares of the capital stock of The Prairie Oil & Gas Company, and received on or about March 25, 1915, under the distribution referred to in Paragraph XIII 24 certificates representing 67,176 shares of the capital stock of The Prairie Pipe Line Company. That none of said shares of the capital stock of The Prairie Pipe Line Company has been sold by the defendant.

XX. That during the year 1914 The Ohio Oil Company was a corporation duly organized and existing under and by virtue of the laws of the State of Ohio and engaged in producing and manufacturing petroleum and mineral oil and transporting oil and petroleum and its products by pipe lines owned by it in the States of Ohio, Indiana, Illinois and Pennsylvania. That at all the times hereinafter mentioned The Ohio Oil Company had an authorized capital stock, all of which was issued and outstanding, of Fifteen million dollars (\$15,000,000) divided into Six hundred thousand (600,000) shares of the par value of Twenty-five dollars (\$25) each.

XXI. That in June, 1914, it was judicially determined by the Supreme Court of the United States that The Ohio Oil Company was required to operate its pipe lines as a common carrier of oil in interstate commerce and as such was subject to the supervision of the Interstate Commerce Commission of the United States. That by Act of Congress approved September 26, 1914, practically all of the business of The Ohio Oil Company other than the operation of its pipe lines as a common carrier of oil in interstate commerce was made subject to the supervision of the Federal Trade Commission. That the gross receipts of the entire business of The Ohio Oil Company was subject to a tax of 4% per annum, imposed by Section 5487 of the Ohio General Code, upon the gross receipts of

25 companies engaged in transporting oil by pipe lines, although a large part of the gross receipts of The Ohio Oil Company was derived from business other than the business of transporting oil by pipe lines.

XXII. That in order to avoid the conflict of Federal authority in the regulation of the business of The Ohio Oil Company and to avoid the annual assessment of said 4% tax upon the gross receipts of the business of The Ohio Oil Company other than the business of transporting oil by pipe lines, it was upon advice of counsel considered advisable that the pipe line property be owned and operated by a corporation other than The Ohio Oil Company and that the stock of the corporation owning and operating the pipe line property should not be permanently held by The Ohio Oil Company. That on or about November 27, 1914 the Board of Directors of The Ohio Oil Company caused a corporation to be organized under the laws of the State of Ohio under the name of The Illinois Pipe Line Company, with an authorized capital stock of Twenty million dollars (\$20,000,000) and having authority under its charter to purchase, own and operate a system of pipe lines for the gathering and transmitting of oil.

XXIII. That the Board of Directors of The Ohio Oil Company, at a meeting held on November 30, 1914, a copy of the minutes of which is set forth in "Exhibit G" annexed hereto and made a part hereof, authorized a subscription on behalf of The Ohio Oil Company to One hundred ninety-nine thousand nine hundred and ninety-five (199,995) shares of the capital stock of The Illinois Pipe Line Company.

26 XXIV. That pursuant to the preamble and resolution adopted at a meeting of stockholders held on November 30, 1914, a copy of which is set forth in "Exhibit H" annexed hereto and made a part hereof, and the preamble and resolution adopted at a meeting of the Board of Directors held on November 30, 1914, a copy of which is set forth in "Exhibit I" annexed hereto and made a part hereof, The Illinois Pipe Line Company offered, by a certain instrument in writing dated November 30, 1914, a copy of which is set forth in "Exhibit J" annexed hereto and made a part hereof, to acquire the pipe line property owned by The Ohio Oil Company and Two hundred thousand dollars (\$200,000.00) in cash, and in consideration to issue all of its capital stock to The Ohio Oil Company, or to pay to The Ohio Oil Company Twenty million dollars (\$20,000,000) in cash or in cash and notes, as might be determined between The Ohio Oil Company and The Illinois Pipe Line Company.

XXV. That the Board of Directors of The Ohio Oil Company, at a meeting held on December 1, 1914, duly adopted the preambles and resolution, a copy of which is set forth in "Exhibit K" annexed hereto and made a part hereof, calling a special meeting of the stockholders of The Ohio Oil Company to be held on December 21, 1914.

XXVI. That said offer of The Illinois Pipe Line Company was accepted by the stockholders of The Ohio Oil Company at a meeting held on December 21, 1914, by the adoption of the preambles and resolutions, a copy of which is set forth in "Exhibit L" annexed hereto and made a part hereof.

XXVII. That between November 30, 1914 and January 1, 1915, it was determined between The Ohio Oil Company and The Illinois Pipe Line Company that in consideration of the transfer of the pipe line property The Illinois Pipe Line Company should issue all of its capital stock to The Ohio Oil Company, and should not pay the sum of Twenty Million Dollars (\$20,000,000) in cash or in cash and notes.

XXVIII. That the Board of Directors of The Ohio Oil Company at a meeting held on December 21, 1914, provided for the effectuation of the transfer of the pipe line property to The Illinois Pipe Line Company and the distribution of the stock of The Illinois Pipe Line Company among the stockholders of The Ohio Oil Company, pro rata, by the adoption of the preambles and resolutions, a copy of which is set forth in "Exhibit M" annexed hereto and made a part hereof.

XXIX. That on or about January 1, 1915, the pipe line property was transferred to The Illinois Pipe Line Company and The Illinois Pipe Line Company issued to The Ohio Oil Company a certificate representing Two hundred thousand (200,000) shares of its capital stock, the receipt for which is set forth in "Exhibit N" annexed hereto and made a part hereof, and The Ohio Oil Company surrendered said certificate to The Illinois Pipe Line Company with instructions to cancel the same and issue new certificates to the stockholders of The Ohio Oil Company so that each stockholder of The Ohio Oil Company should receive a certificate or certificates representing a number of shares of the capital stock of The Illinois Pipe Line Company equal to one-third ($1/3$) the number of shares of the capital stock of The Ohio Oil Company standing in his or her name on the stock books of The Ohio Oil Company on January 2, 1915, and pursuant to such instructions said new certificates were so issued and distributed.

XXX. That upon the transfer of the pipe line property to The Illinois Pipe Line Company the pipe line property was taken up as an asset of The Illinois Pipe Line Company and eliminated as an asset of The Ohio Oil Company. That the shares of stock of The Illinois Pipe Line Company were entered as an asset of The Ohio Oil Company. That the practice of The Ohio Oil Company was to charge to dividend account the amount of dividends paid and at the end of the year to charge off to profit and loss the amount of dividends paid during the year. That no entry was made in dividend account of The Ohio Oil Company in connection with this transaction. That there was charged off to profit and loss the sum of Twenty million dollars (\$20,000,000). That the following voucher entries were made:

Entry Dated January 1, 1915.

The Pipe Line Property of this company, located in the States of Illinois, Indiana, Ohio and Pennsylvania, consisting of complete Trunk Lines and Gathering Lines systems, together with the loose material appertaining thereto and \$200,000 in Cash, having been sold to the Illinois Pipe Line Company pursuant to action taken at meeting of Stockholders and meeting of Directors held on December 21, 1914, for 200,000 shares of the par value of \$100 each of the Capital Stock of The Illinois Pipe Line Company, the following entries are made in accordance therewith.

Stock of the Illinois Pipe Line Co.	\$20,000,000.00	
Pipe Line Investment.....		\$15,429,941.62
Material & Merchandise.....		18,437.59
Cash		200,000.00
Profit & Loss		4,351,620.79
	<u>20,000,000.00</u>	<u>20,000,000.00</u>

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Entry Dated January 1, 1915.

Entry to restore the Depreciation Reserve which had been established in the Books of this Company with respect to its Pipe Line Property, and which Property has been sold:

Depreciation on Property.....	5,467,075.52	
Profit & Loss.....		5,467,075.52

Entry Dated January 31, 1915.

The Directors of this Company having voted at meeting held on December 21, 1914, to distribute, pro rata, to stockholders of this company of record January 2, 1915, the Capital Stock of The Illinois Pipe Line Company, the following entry is made in accordance therewith.

Profit & Loss (Dividend).....	20,000,000.00	
Stock of The Illinois Pipe Line Co.		20,000,000.00

That all of the foregoing voucher entries were subsequently carried into the ledger.

That the surplus of The Ohio Oil Company amounted to the sum of Fifty-four million, twenty-four thousand, seven hundred forty-six and 63/100 dollars (\$54,024,746.63) on March 1, 1913, the sum of Sixty-eight million, eight hundred forty-nine thousand, four hundred twenty-seven and 49/100 dollars (\$68,849,427.49) on December 31, 1914, immediately before the transfer of the pipe line property, and the sum of Fifty-eight million, six hundred fifty-eight thousand, fifteen and 35/100 dollars (\$58,658,015.35) on January 31, 1915, after the completion of the transaction hereinbefore set forth.

XXXI. That on March 1, 1913, The Ohio Oil Company owned and had paid for all or a substantial percentage of the pipe line property which was subsequently transferred to The Illinois Pipe Line Company. That if the pipe line property owned by The Ohio Oil Company on March 1, 1913, and which was transferred to The Illinois Pipe Line Company had any greater value at the time of its transfer than on March 1, 1913, the amount of the increase in value was not equivalent to the par value of the stock of The Illinois Pipe Line Company distributed to the stockholders of The Ohio Oil Company.

XXXII. That after the transfer of the pipe line property of The Ohio Oil Company to The Illinois Pipe Line Company, and the distribution of the stock of The Illinois Pipe Line Company to the stockholders of The Ohio Oil Company, the asset or book value of the capital stock of The Ohio Oil Company was reduced to the extent of the asset or book value of the pipe line property and the asset or book value of each share of the capital stock of The Ohio Oil Company was proportionately reduced.

XXXIII. That prior to the transfer of the pipe line property to The Illinois Pipe Line Company sales of stock of The Ohio Oil Company had been made in the open market as follows:

December 1, 1914, at 187.
 December 26, 1914, at 188.
 December 30, 1914, at 186.

That after the transfer of the pipe line property sales of stock of The Ohio Oil Company were made in the open market as follows:

January 2, 1915, at 143.
 January 16, 1915, at 142.
 February 3, 1915, at 131.

That sales of stock of The Illinois Pipe Line Company were made in the open market as follows:

January 2, 1915, at 127.
 January 16, 1915, at 141.
 February 3, 1915, at 130.

XXXIV. That the value of the shares of the capital stock of The Ohio Oil Company owned by each stockholder, including the defendant, immediately prior to the transfer of the pipe line property of The Illinois Pipe Line Company was substantially the same as the value of the shares of the capital stock of The Ohio Oil Company owned by each stockholder, including the defendant, plus the value of the shares of the capital stock of The Illinois Pipe Line Company owned by each stockholder of The Ohio Oil Company, including the defendant, immediately after such transfer.

XXXV. That on March 1, 1913, and on January 1, 1915, the defendant was the owner of 150,313 shares of the capital stock of The Ohio Oil Company, and received on or about February 4, 1915, under the distribution referred to in Paragraph XXIX, certificates representing 50,104-983,383/2,950,149 shares of the capital stock of The Illinois Pipe Line Company. That none of said shares of the capital stock of The Illinois Pipe Line Company has been sold by the defendant.

XXXVI. That in accordance with the provisions of the Income Tax Law, being Section 2 of an Act of Congress of October 3, 1913, entitled "An Act to reduce tariff duties and to provide revenue for the Government and for other purposes," the defendant, in the year 1916, duly filed his return of income received during the year 1915 and did not include therein as income any part of the value of said shares of stock of The Prairie Pipe Line Company and The Illinois Pipe Line Company received by him during the year 1915 as aforesaid.

32 XXXVI. That thereafter and on or about September 14, 1917, Mark Eisner, as Collector of Internal Revenue for the Third District of New York, claiming to act in pursuance of the provisions of said Section 2 of said Act of Congress of October 3, 1913, demanded of the defendant the sum of Seven hundred and fifty-four thousand seven hundred and thirty-seven 09/100 dollars (\$754,737.09) as an additional income tax for the year 1915. That included in said sum was the sum of seven hundred and three thousand, six hundred and eighty-one 99/100 dollars (\$703,681.99) which said Mark Eisner claimed to be due and payable by the defendant as an additional income tax for the year 1915 imposed upon the sum of Eleven million seven hundred and twenty-eight thousand thirty-three 34/100 dollars (\$11,728,033.34), being the equivalent of the par value of said 67,176 shares of stock of The Prairie Pipe Line Company and said 50,104-983,383/2,950,149 shares of stock of The Illinois Pipe Line Company received by the defendant in the year 1915 as aforesaid. That said Mark Eisner threatened to enforce the payment of said tax, together with penalties and interest, as provided in said Section 2 of said Act of Congress of October 3, 1913, and thereupon the defendant, solely to avoid the imposition of penalties and interest and the collection thereof, and under compulsion, duress and coercion, paid to said Mark Eisner, as such Collector, on or about September 24, 1917, the sum of Seven hundred and fifty-four thousand seven hundred and thirty-seven 09/100 dollars (\$754,737.09), included in which sum was the sum of seven hundred and three thousand, six hundred and eighty-one 99/100 (\$703,681.99) which represented the alleged tax imposed on the par value of said shares of stock of The Prairie Pipe Line Company and said shares of stock of The Illinois Pipe Line Company received by the defendant as aforesaid; but said payment was made under protest, and at the same time the defendant protested in writing that no tax was due from him on account of, or on account of the receipt

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of, said shares of stock or any thereof, and that said Mark Eisner was without authority to exact or collect the same or any part thereof, and that the defendant paid the same under duress and compulsion.

XXXVIII. That thereafter the defendant duly took an appeal to the Commissioner of Internal Revenue and demanded repayment and refund of the said alleged tax, in accordance with the law and the regulations and Rules of the Treasury Department. That said appeal was duly perfected and filed with the Commissioner of Internal Revenue on or about March 7, 1918, and that said appeal was disallowed by said Commissioner of Internal Revenue on or about May 24, 1919.

XXXIX. That neither under Section 2 of said Act of Congress of October 3, 1913, nor under any other law or statute of the United States, did the distribution of said shares of stock of The Prairie Pipe Line Company and said shares of stock of The Illinois Pipe Line Company to the defendant as aforesaid constitute a dividend, nor did the receipt thereof by the defendant constitute the receipt of a dividend or taxable income in any form, and no tax was due or has become due to the plaintiff on the value of said shares of stock received by the defendant as aforesaid, or any of them, or any part thereof, or on account of the receipt of said shares of stock or any thereof.

XL. That the Act of Congress under which said sum of Seven hundred and three thousand, six hundred and eighty-nine 99/100 dollars (\$703,681.99) was levied on the value of said shares of stock of The Prairie Pipe Line Company and The Illinois Pipe Line Company, or on account of the receipt thereof, and the payment of said sum compelled, and upon which the alleged cause of action set forth in the complaint is based, to wit: Section 2 of an Act of Congress of October 3, 1913, entitled "An Act to reduce tariff duties and to provide revenue for the Government and for other purposes," is invalid and void in so far as the same may be asserted to confer power to make such levy or to sustain such alleged cause of action, because in violation of the provision of Article I, Section 2, Clause 3, of the Constitution of the United States, to the effect that "direct Taxes shall be apportioned among the several States," and of the provision of Article I, Section 9, Clause 4 thereof, to the effect that "no capitation or other direct tax shall be laid unless in proportion to the census of enumeration hereinbefore directed to be taken," and neither said shares of stock of The Prairie Pipe Line Company nor said shares of stock of The Illinois Pipe Line Company received by the defendant as aforesaid, nor any of them, nor any part of the value thereof, constituted income or was subject to taxation as income within the meaning of the Sixteenth Amendment to the Constitution of the United States, which provides that "Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or

enumeration." And the defendant hereby draws in question the constitutionality of the said Act of Congress and of all of the provisions thereof assumed or asserted to authorize the said levy and the enforcement of the payment thereof, and to sustain the alleged cause of action set forth in the complaint.

Wherefore, the defendant demands judgment dismissing the complaint with costs to the defendant.

MURRAY, PRENTICE & ALDRICH,
Attorneys for Defendant.

37 Wall Street, Manhattan, New York.

STATE OF NEW YORK,
County of New York, ss:

George Welwood Murray, being duly sworn, deposes and says:

I am a member of the firm of Murray, Prentice & Aldrich, the attorneys for the defendant herein, and have had charge of this case. I know the contents of the foregoing amended answer, and the same is true of my own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

That the sources of my information and the grounds of my belief are information obtained from the officers of The Prairie Oil & Gas Company and The Ohio Oil Company, the books and papers of the defendant, and the communications addressed to the defendant by the Commissioner of Internal Revenue and the Collector of Internal Revenue for the Third District of the State of New York, and other correspondence, papers and documents.

GEO. WELWOOD MURRAY.

Sworn to before me this 30th day of June, 1921.

TALBOT M. MALCOLM,
Notary Public, New York County.

Clerk's No. 514, Register's No. 2472.
Commission expires March 30, 1922.

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EXHIBIT A.

Whereas, It has been determined in the United States Supreme Court, by opinion handed down on the twenty-second day of June, 1914, that The Prairie Oil & Gas Company is required to operate its pipe lines as a common carrier of oil in interstate commerce, and as such is subject to the supervision, regulation and control of the Interstate Commerce Commission; and

Whereas, The Prairie Oil & Gas Company is engaged almost wholly in such business as is interstate commerce according to law; and

Whereas, By Act of Congress, approved on the twenty-sixth day of September, 1914, practically all of the business of this company, aside from the transportation of oil in interstate commerce by means of pipe lines, is subjected to the supervision and regulation of the Federal Trade Commission; and

Whereas, By reason of the foregoing, it is considered by the stockholders of The Prairie Oil & Gas Company advisable that the branches of this company's business, which are subject to the supervision and regulation of the Interstate Commerce Commission, be separated in fact from the business subjected to the supervision and control of the Federal Trade Commission; and

Whereas, The said stockholders are advised and believe that this and can be best attained by and through the organization of a corporation which shall take over all the properties of The Prairie Oil & Gas Company of every nature and kind which may be reasonably necessary and essential to the conduct of the business of gathering and transporting oil in interstate commerce by means of pipe lines, and to prosecute, conduct and operate the business in which such property is now employed, and that The Prairie Oil & Gas Company discontinue the transaction and conduct of such business.

Now, Therefore, be it Resolved: That the Board of Directors of The Prairie Oil & Gas Company be, and said Board is hereby instructed, authorized and directed to procure the organization of a corporation under the laws of such one of the states as such Board shall select; to cause all of the property and funds of The Prairie Oil & Gas Company necessary or useful to the business of gathering and transporting oil by means of pipe lines in interstate commerce to be sold, conveyed and transferred to such new corporation, and to accept and receive in payment therefor the capital stock of such corporation, issued to, and for distribution among, the stockholders of The Prairie Oil & Gas Company pro rata according to their respective holdings in said The Prairie Oil & Gas Company, as may be shown by the stock records of said company on such day as shall be determined by the Board of Directors of this company after fourteen days' notice thereof shall have been mailed to each stockholder; provided that the par value of the capital stock of said corporation to be organized as aforesaid shall not exceed the reasonable value of its property and funds.

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EXHIBIT B.

Resolved: That a sub-committee composed of W. F. Gates and C. H. Kountz be appointed by this Board and authorized to negotiate with a committee appointed by The Prairie Oil & Gas Company to ascertain at what price and under what conditions The Prairie Oil & Gas Company might be willing to dispose of its pipe lines and other appurtenances necessary in the operation of the same (including private telephone and telegraph system) in the states of Indiana, Illinois, Iowa, Missouri, Kansas, Oklahoma and Arkansas; and that said committee conduct such negotiations as soon as possible and report the result of its negotiations to this Board for final action.

EXHIBIT C.

Whereas, The Prairie Pipe Line Company, a corporation, has been organized under the laws of the State of Kansas, with an authorized capital stock of Twenty-seven million (\$27,000,000) Dollars and authority under its charter to purchase, own and operate a system of pipe lines, such as is now owned and operated by this company for the gathering and transporting of crude oil;

And Whereas, said corporation, The Prairie Pipe Line Company, has made a proposition to purchase the pipe line property of
 40 The Prairie Oil & Gas Company, now owned and used by it in the gathering and transportation of crude oil, at fair and reasonable prices and deliver in payment therefor Twenty Seven Million (\$27,000,000) Dollars of the capital stock of said The Prairie Pipe Line Company, with the understanding and upon condition, however, that if the aggregate value of the property so sold and purchased, which cannot be at this date fully determined, shall exceed the sum of Twenty-Seven Million (\$27,000,000) Dollars. The Prairie Pipe Line Company will pay in cash an amount equal to such excess, and in case such amount, when fully determined, shall be less than Twenty-Seven Million (\$27,000,000) Dollars, then and in that event The Prairie Oil & Gas Company shall turn over to said Pipe Line Company an amount in cash which will make the combined value of such property sold and delivered and such cash turned over equal the sum of Twenty Seven Million (\$27,000,000) Dollars.

Now, Therefore, be it Resolved: That it is in the judgment of this Board of Directors and its individual members, to the interests of the stockholders that such sale and transfer be consummated in accordance with the resolution adopted at the stockholders' annual meeting, as aforesaid.

Be it Further Resolved: That a certain written contract for the consummation of the sale and transfer above described, which is this day submitted to this Board, by a special committee heretofore appointed to confer with The Prairie Pipe Line Company in
 41 this matter, in a manner satisfactory to this Board sets forth the basis, terms and conditions upon which The Prairie Oil & Gas Company, acting through its Board of Directors, desires such sale and transfer to be made.

And be it Further Resolved: That the President, J. E. O'Neil, be, and he is hereby, authorized and directed on behalf of The Prairie Oil & Gas Company to execute said contract in duplicate; that J. A. Hollihan, Secretary of The Prairie Oil & Gas Company, is authorized and directed to attest the same and attach the corporate seal of this company.

And be it Further Resolved: That all deeds, assignments, conveyances and other necessary papers and documents which may be required to be executed in the consummation of said contract and sale shall be executed on behalf of The Prairie Oil & Gas Company by W. S. Fitzpatrick, its Vice-President, and attested under the seal of this corporation by its Secretary.

EXHIBIT D.

Whereas, Growing out of negotiations heretofore conducted and considered between this Company and The Prairie Oil & Gas Company, relating to the purchase by this Company of the pipe line system owned and operated by The Prairie Oil & Gas Company in the gathering and transportation of crude oil and the property appurtenant thereto and used in connection therewith, said corporation, The Prairie Oil & Gas Company, has made a proposition to sell the pipe line property of The Prairie Oil & Gas Company, now owned and used by it in the gathering and transportation of crude oil, at fair and reasonable prices and receive in payment therefor Twenty Seven Million (\$27,000,000.00) Dollars of the capital stock of said The Prairie Pipe Line Company, with the understanding and upon condition, however, that if the aggregate value of the property so sold and purchased, which cannot at this date be fully determined, shall exceed the sum of Twenty Seven Million (\$27,000,000.00) Dollars, The Prairie Pipe Line Company will pay in cash an amount equal to such excess, and in case such amount, when fully determined, shall be less than Twenty Seven Million (\$27,000,000.00) Dollars, then and in that event The Prairie Oil & Gas Company shall pay to the said The Prairie Pipe Line Company an amount in cash which, when added to the value of such property sold and delivered, will equal the sum of Twenty Seven Million (\$27,000,000.00) Dollars.

Now, Therefore, be it Resolved, That the price at which said property is offered for sale, amounting in the aggregate to approximately Twenty Seven Million (\$27,000,000.00) Dollars, is a fair and reasonable price for the same and does not exceed the cost of present construction of a pipe line of equal length with equal capacity and equipment.

And be it Further Resolved, That a certain written contract for the consummation of the sale and transfer above described, which is this day submitted to this Board, by a special committee heretofore appointed to confer with The Prairie Oil & Gas Company in this matter, in a manner satisfactory to this Board sets forth the basis, terms and conditions upon which The Prairie Pipe Line Company, acting through its Board of Directors, desires such purchase to be made.

And be it Further Resolved, That the President, W. F. Gates, be, and he is hereby authorized and directed on behalf of The Prairie Pipe Line Company to execute said contract in duplicate; that F. M. Wilhelm, Secretary, is authorized and directed to attest the same and attach the corporate seal of this Company.

And be it Further Resolved, That upon the delivery to the Secretary of this Company by The Prairie Oil & Gas Company of a list of the stockholders of said Company, with the address of each stockholder and the amount of stock in The Prairie Pipe Line Company which it desires to have issued to each, not exceeding in the aggregate 270,000 shares, it is hereby ordered and directed that the Secre-

tary of this Company cause certificates for shares and fractions of shares to be issued in accordance with such list, and that when the stock of this Company is so issued the same shall be mailed by registered mail, with the knowledge, consent and under the supervision of the Secretary of The Prairie Oil & Gas Company, to the several persons to whom the same shall be issued at the address furnished by said The Prairie Oil & Gas Company, as aforesaid;

And be it Further Resolved, That C. H. Kountz, Vice-President, be and he is hereby authorized on behalf of The Prairie Pipe Line Company to make, execute and file all necessary tariffs, supplements and amendments to tariffs, either of The Prairie Oil & Gas Company or The Prairie Pipe Line Company, and all concurrences that may be required by law or the rules and regulations of the Interstate Commerce Commission in connection with the purchase, acquisition and taking over of the pipe lines of The Prairie Oil & Gas Company, and is further authorized and directed to demand from The Prairie Oil & Gas Company and to receive and approve such deeds, conveyances, assignments and title papers as may be necessary to vest in The Prairie Pipe Line Company the full ownership and possession of the property purchased under contract this day executed between The Prairie Oil & Gas Company and The Prairie Pipe Line Company.

EXHIBIT E.

This agreement, Made and entered into by and between The Prairie Oil and Gas Company, a corporation, party of the first part, and The Prairie Pipe Line Company, a corporation, party of the second part,

Witnesseth, That for and in consideration of the covenants, promises and agreements of the party of the second part, hereinafter set out, the party of the first part hereby undertakes and agrees that it will sell, convey, transfer, set over, and deliver to party of the second part all the pipe lines now owned and used by it in the gathering and transportation of oil in interstate commerce, together with all pumping stations, oil tanks, machinery and equipment of every nature and kind (including private telegraph and telephone lines), necessary or useful in the operation of said gathering lines and pipe lines, and all lands and rights-of-way upon which any or all of the property above mentioned and referred to shall be situated;

Second. Party of the first part will deliver to party of the second part all of the property above mentioned and referred to so that second party may begin on the 1st day of February, 1915, and thereafter continue, the transportation of oil throughout the system of such pipe lines, and that thereafter, as speedily as the same can be accomplished, first party will cause to be executed and delivered to second party the necessary deeds, conveyances, assignments, and other title papers, to the end that all the titles, rights, and privileges in, to, or connected with the ownership of first party to any and all

of the property hereinbefore mentioned and referred to shall be fully vested in The Prairie Pipe Line Company;

46 Third. Party of the second part hereby agrees to purchase all the property, rights, and privileges hereinbefore mentioned and referred to, and pay to The Prairie Oil and Gas Company therefor the actual cost of the same as shown by investment records of The Prairie Oil and Gas Company on the 31st day of January, 1915.

Fourth. Party of the second part agrees that in consideration of the sale, conveyance, transfer and delivery of the aforesaid property, which shall include the working stocks of oil in said pipe lines and tanks on the 1st day of February, 1915, it will issue and deliver to the party of the first part Two hundred Seventy Thousand (270,000) shares of its capital stock of the par value of One Hundred (\$100.00) Dollars per share, in such number of shares or fractions of shares as may be necessary for the actual distribution of such stock among the stockholders of The Prairie Oil and Gas Company, in accordance with a list to be furnished by said first party, showing the names and number of shares or the fraction of a share belonging to each, said list to be filed with the Secretary of the second party on or before the — day of March, 1915.

Fifth. It is mutually agreed between the parties hereto that if the aggregate cost of the property delivered to and received by party of the second part, determined in the manner aforesaid, shall not equal the sum of Twenty Seven Million (\$27,000,000.00) Dollars, the par value of the capital stock to be issued in exchange therefor, then and

47 in that case party of the first part shall pay to party of the second part in cash such sum as may be necessary, when added to the value of such property to equal Twenty Seven Million Dollars (\$27,000,000.00), and if the cost of such property, so delivered and received, shall be in excess of Twenty Seven Million (\$27,000,000.00) Dollars, then and in that case, party of the second part agrees to pay to party of the first part such excess in cash.

In Witness Whereof, This instrument is executed in duplicate by the President and Attested by the Secretary, under seal of each of the above named contracting parties, each having been first thereunto duly authorized by the Board of Directors of the respective companies which they represent, this the 21st day of January, 1915.

THE PRAIRIE OIL AND
GAS COMPANY,

By J. E. O'NEIL, *President*.

Attest:

J. A. HOLLIHAN,
Secretary.

THE PRAIRIE PIPE LINE
COMPANY,

By W. F. GATES, *President*.

Attest:

F. M. WILHELM, *Secretary.*

EXHIBIT F.

Whereas, The Prairie Oil & Gas Company, through its authorized officers, has this day entered into an agreement with the proper officials of The Prairie Pipe Line Company to sell to The Prairie Pipe Line Company its pipe lines with all appurtenances thereunto belonging, and to receive in payment therefor the capital stock of The Prairie Pipe Line Company, amounting to two hundred and seventy thousand (270,000) shares of the par value of One Hundred (\$100.00) Dollars each, or Twenty Seven Million (\$27,000,000) Dollars, and

Whereas, It is not the intention of this company to retain the aforesaid capital stock of The Prairie Pipe Line Company, but that it is the purpose of this company that such capital stock of The Prairie Pipe Line Company be distributed pro rata amongst the stockholders of The Prairie Oil & Gas Company in accordance with their holdings in said company on February 9th, 1915, as may be shown by the stock records of this company.

Now, Therefore, be it Resolved: That the stock transfer books of this company be and the same are hereby closed for the transfer of shares from and after February 9th, 1915, up to and including February 23rd, 1915.

Be it Further Resolved: That the Secretary of this company furnish to The Prairie Pipe Line Company a list of the stockholders of this company as shown by the stock books on February 9th, 1915, together with the number of shares held by each, and when The Prairie Pipe Line Company shall have issued to each of such stockholders its stock in amount equal to one and one-half times the amount of stock held by him or her in The Prairie Oil & Gas Company, then the said Secretary is hereby directed to make, or cause to be made, the proper distribution of such stock in The Prairie Pipe Line Company among the stockholders of The Prairie Oil & Gas Company, as above provided.

EXHIBIT G.

Directors' Meeting.

November 30th, 1914.

Meeting of the Directors of the Ohio Oil Company, Duly Called and Held at the General Office of said Company, in the City of Findlay, Ohio, on the 30th Day of November, A. D. 1914, at Ten o'clock, A. M., with J. C. Donnell, President, in the Chair.

Present: J. C. Donnell, R. J. Berry, O. D. Donnell and F. E. Hurley.

The Secretary read the minutes of the previous meeting, and on motion duly seconded same were approved as read.

The President stated that the Illinois Pipe Line Company had been incorporated under the Laws of the State of Ohio for the

purpose of transporting petroleum and water, and purchasing, leasing, acquiring, constructing, and holding and disposing of Pipe Lines and Pipe Line property, and it is the purpose of the Incorporators to make a proposition to The Ohio Oil Company to purchase its Pipe Line property in the states of Ohio, Indiana, Illinois and Pennsylvania, including both the trunk and gathering pipe line systems; and that the Books for Subscription to the Capital Stock of said The Illinois Pipe Line Company have been opened. Mr. F. E. Hurley then offered the following Resolution:

Resolved: That the President of this Company be, and he is hereby authorized to subscribe on behalf of The Ohio Oil Company to 199,995 shares of the Capital Stock of The Illinois Pipe Line Company, and to pay for the same at such time and in such installments as may be required by law, or by the Directors of said Corporation.

On motion of R. J. Berry, seconded by O. D. Donnell, the above Resolution was unanimously adopted.

There being no further business, the meeting on motion adjourned.

(Signed)

F. E. HURLEY,

Secretary.

EXHIBIT II.

Whereas: It being made known to the stockholders of this company that the pipe line property of The Ohio Oil Company, located in the states of Ohio, Indiana, Illinois and Pennsylvania, would be offered for sale, and it appearing desirable for the purposes of this company to acquire such property;

Be it therefore resolved: That the directors of this Company be authorized to make a proposition for the purchase of the pipe line property of The Ohio Oil Company located in the states of Ohio, Indiana, Illinois and Pennsylvania, including its trunk and gathering line systems with the equipment belonging thereto, and cash in the sum of two hundred thousand dollars, and offer therefor the sum of twenty million dollars, and in case of the acceptance of said proposition by The Ohio Oil Company, that the directors be, and they are hereby authorized and directed to do all the things necessary or proper to carry into effect and complete the purchase of said property.

EXHIBIT I.

Whereas: The stockholders of this company have authorized the directors to make a proposition to The Ohio Oil Company for the purchase of the pipe line property of The Ohio Oil Company in Ohio, Indiana, Illinois and Pennsylvania, including its trunk and gathering pipe line systems with the equipment belonging thereto, and cash in the sum of two hundred thousand dollars, and to offer therefor the sum of twenty million dollars.

Now, Therefore, be it Resolved: That the President of this company be, and he is hereby authorized and directed in accordance with

the authorization and instruction of the stockholders of the company, to make the following proposition to the said The Ohio Oil Company for the purchase of said pipe line property.

The Illinois Pipe Line Company, a corporation organized under the laws of the state of Ohio, makes the proposition to The Ohio Oil Company to purchase from The Ohio Oil Company its pipe line property located in the states of Ohio, Indiana, Illinois and Pennsylvania, including both the trunk and gathering pipe line systems with the equipment belonging thereto, and cash in the sum of two hundred thousand dollars, in accordance with the schedule attached hereto which has been furnished to The Illinois Pipe Line Company by The Ohio Oil Company in a preliminary negotiation for this property, and which schedule is made a part of this proposition.

The Illinois Pipe Line Company agrees to pay for said property and cash the sum of twenty million dollars, which payment shall be made in cash, or in cash and notes, or in the paid up capital stock of this company, as may be determined by the parties hereto, in case this proposition is accepted. In case of the acceptance of the proposition, the transfer of said pipe line property is to take effect as of January 1st, 1915, or as soon after that time as practicable.

53

EXHIBIT J.

Findlay, Ohio, November 30, 1914.

To the Ohio Oil Company:

The Illinois Pipe Line Company, a corporation organized under the laws of the State of Ohio, makes the proposition to The Ohio Oil Company to purchase from The Ohio Oil Company its pipe line property located in the States of Ohio, Indiana, Illinois and Pennsylvania, including both the trunk and gathering pipe line systems with the equipment belonging thereto, and cash in the sum of two hundred thousand (\$200,000.00) Dollars, in accordance with the schedule attached hereto which has been furnished to the Illinois Pipe Line Company by The Ohio Oil Company in a preliminary negotiation for this property, and which schedule is made a part of this proposition.

The Illinois Pipe Line Company agrees to pay for said property the sum of \$20,000,000, which payment shall be made in cash, or in cash and notes, or in the paid up capital stock of this Company, as may be determined by the parties hereto, in case this proposition is accepted. In case of the acceptance of the proposition the transfer of said pipe line property is to take effect as of January 1st, 1915, or as soon after that time as practicable.

THE ILLINOIS PIPE LINE
COMPANY,
By J. R. PENN, Jr.,
President.

EXHIBIT K.

Whereas The Illinois Pipe Line Company has made the following proposition to The Ohio Oil Company for the purchase of its pipe line property:

The Illinois Pipe Line Company, a corporation organized under the laws of the State of Ohio, makes the proposition to The Ohio Oil Company to purchase from The Ohio Oil Company its pipe line property located in the states of Ohio, Indiana, Illinois and Pennsylvania, including both the trunk and gathering pipe line systems with the equipment belonging thereto and cash in the sum of Two Hundred Thousand Dollars, in accordance with the schedule attached hereto which has been furnished to The Illinois Pipe Line Company by the Ohio Oil Company in a preliminary negotiation for this property, and which schedule is made a part of this proposition. The Illinois Pipe Line Company agrees to pay for said property the sum of \$20,000,000.00, which payment shall be made in cash, or in cash and notes, or in the paid up Capital Stock of this Company, as may be determined by the parties hereto, in case this proposition is accepted. In case of the acceptance of the proposition, the transfer of said pipe line property is to take effect as of January 1st, 1915, or as soon after that time as practicable."

And Whereas: On account of the importance of the question involved in said proposition, it is the sense of this board that the same should be submitted to the stockholders of the Company for determination; therefore,

Be it Resolved: That a special meeting of the stockholders of The Ohio Oil Company be called and held at its principal office in the City of Findlay, Ohio, on the 21st day of December A. D., 1914, at ten o'clock, A. M., of that day, for the purpose of considering and acting upon the proposition made by The Illinois Pipe Line Company, and that the Secretary be, and he is hereby instructed and directed to mail to all stockholders proper notice of said meeting, setting forth the time and place of the same, and the purpose for which it is to be held.

EXHIBIT L.

Whereas, The Board of Directors of The Ohio Oil Company has received the following proposition from The Illinois Pipe Line Company to purchase its pipe line property:

"The Illinois Pipe Line Company, a corporation organized under the laws of the State of Ohio, makes the proposition to The Ohio Oil Company to purchase from The Ohio Oil Company its pipe line property located in the states of Ohio, Indiana, Illinois and Pennsylvania, including both the trunk and gathering pipe line systems with the equipment belonging thereto and cash in the sum of Two hundred thousand dollars, in accordance with the schedule attached hereto which has been furnished to The Illinois Pipe Line Company by The Ohio Oil Company in a preliminary

negotiation for this property, and which schedule is made a part of this proposition.

"The Illinois Pipe Line Company agrees to pay for said property the sum of \$20,000,000, which payment shall be made in cash, or in cash and notes, or in the paid up Capital Stock of this Company, as may be determined by the parties hereto, in case this proposition is accepted. In case of the acceptance of the proposition, the transfer of said pipe line property is to take effect as of January 1st, 1915, or as soon after that time as practicable."

Now, therefore, be it resolved, that the said proposition be and the same is hereby accepted and that the Board of Directors of this Company be and hereby are fully authorized, instructed and empowered to accept the said proposition for the sale of all the Company's pipe line property, including both the trunk and gathering pipe line systems with the equipment belonging thereto and located in the states of Ohio, Indiana, Illinois and Pennsylvania; and

Further resolved, that the Board of Directors of this Company be and hereby are authorized, instructed and empowered to sell and dispose of said pipe line property, including both the trunk and gathering pipe line systems with the equipment belonging thereto as aforesaid, together with cash in the sum of Two hundred thousand dollars, at such time and upon such terms and conditions

57 as is provided in said proposition and as to them may seem best, hereby giving said Board of Directors full power and authority to act in behalf of The Ohio Oil Company in the sale of its said pipe line property, and to do all things necessary for the proper consummation of the sale and transfer of the said pipe line property.

EXHIBIT M.

Whereas, The Illinois Pipe Line Company, a corporation organized under the laws of the State of Ohio, has made a proposition to purchase all of The Ohio Oil Company's pipe line property, including both the trunk and gathering pipe line systems with the equipment belonging thereto and located in the states of Ohio, Indiana, Illinois and Pennsylvania, and to pay therefor the sum of \$20,000,000, which payment shall be made in cash, or in cash and notes, or in the paid up Capital Stock of The Illinois Pipe Line Company; and

Whereas, the stockholders of The Ohio Oil Company have duly and regularly approved of said proposition and authorized and directed that the said Board of Directors sell said pipe line property at such time and upon such terms and conditions as are provided in said proposition and as to them may seem best;

58 Now, therefore, be it resolved, That the said proposition be and the same is hereby accepted by this Company; and that the Board of Directors of The Ohio Oil Company hereby agrees to sell and convey to The Illinois Pipe Line Company, a corporation organized under the laws of the State of Ohio, all of its said pipe line property, including both the trunk and gathering pipe line systems, with the equipment belonging thereto and located in

the states of Ohio, Indiana, Illinois and Pennsylvania, and cash in the sum of Two Hundred Thousand Dollars, upon the following terms, to wit: Payment by The Illinois Pipe Line Company of 200,000 shares of its Capital Stock of the par value of \$20,000,-000.00; transfer of said property to take effect as of January 1st, 1915.

Further resolved, That the President, or one of the Vice-Presidents, and the Secretary of the Company are hereby empowered and instructed to execute all proper instruments to carry such acceptance into effect and on behalf of this Company to receive the said 200,000 shares of the Capital Stock of The Illinois Pipe Line Company, and to do all such other things in connection with such sale and the said transfer of the property as may be found necessary for its proper consummation.

Whereas, by reason of the sale of its pipe line property, The Ohio Oil Company will receive on January 1st, 1915, the entire Capital Stock of The Illinois Pipe Line Company, consisting of 200,000 shares of the par value of \$100.00 per share; and

Whereas, it is the sense of this board that a distribution of said stock should be made to the stockholders of this Company;

Now, therefore, be it resolved, That a pro rata distribution of said stock be made to stockholders of The Ohio Oil Company of record January 2nd, 1915, and that certificates representing said stock be mailed to stockholders on February 1st, 1915, or as soon thereafter as possible; and further, that the transfer books of this Company be closed from 12 o'clock m. on January 2nd, 1915, until 8 o'clock a. m., February 1st, 1915.

EXHIBIT N.

Findlay, Ohio, January 1st, 1915.

Received of The Illinois Pipe Line Company Certificate No. 1, for Two Hundred Thousand (200,000) Shares of the Capital Stock of said The Illinois Pipe Line Company, of the par value of One Hundred Dollars (\$100.00) each, said Stock being in payment for the Pipe Line property of The Ohio Oil Company located in the States of Ohio, Indiana, Illinois and Pennsylvania, including both the Trunk and Gathering Pipe Line Systems, with the equipment belonging thereto, and cash in the sum of Two Hundred Thousand (\$200,000.00) Dollars, pursuant to a proposition made to The Ohio Oil Company, under date of November 30th, 1914, and in accordance with the schedule attached to and made a part of said proposition, and which said proposition was accepted by The Ohio Oil Company.

By agreement between The Ohio Oil Company and The Illinois Pipe Line Company the transfer of said property takes effect as of January 1st, 1915. All of the instruments necessary to pass title to rights of way, real estate, etc., to The Illinois Pipe Line Company,

have not yet been made, but these instruments will be made and executed with all possible dispatch.

THE OHIO OIL COMPANY,
By J. C. DONNELL, *President*.

61 United States District Court, Southern District of New York.

UNITED STATES OF AMERICA, Plaintiff,

against

JOHN D. ROCKEFELLER, Defendant.

The plaintiff above-named by William Hayward, United States Attorney for the Southern District of New York, its attorney, demurs to the affirmative defense set forth in the amended answer herein upon the ground that the same is insufficient in law upon the face thereof.

Wherefore, plaintiff demands judgment and that said affirmative defense be dismissed.

WILLIAM HAYWARD,
*United States Attorney for the Southern District of
New York, Attorney for Plaintiff.*

Office and Post Office Address, United States Courts and Post Office Building, Borough of Manhattan, City of New York.

62 United States District Court, Southern District of New York.

UNITED STATES OF AMERICA, Plaintiff,

against

JOHN D. ROCKEFELLER, Defendant.

Please to take notice that upon the complaint, amended answer and plaintiff's demurrer to the affirmative defense therein, the undersigned will move this Court at a Stated Term thereof for the hearing of motions to be held at the United States Courts and Post Office Building in the Borough of Manhattan, City, County, State and Southern District of New York, on the 30th day of June, 1921, at 10 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, for an order granting to the plaintiff judgment upon the pleadings and granting to said plaintiff such other further and general relief as to the Court in the premises may seem just and proper.

Dated: June 28, 1921.

Yours, etc.,

WILLIAM HAYWARD,
*United States Attorney for the Southern District of
New York, Attorney for Plaintiff.*

Office and Post Office Address: U. S. Courts and Post Office Building, Borough of Manhattan, City of New York.

To Murray, Prentice & Aldrich, Esqs., Attorneys for Defendant.

[Endorsed:] 24-77. Court Docket No. —, Form No.

336. U. S. District Court, Southern District of New York.

The United States of America, Plaintiff, versus John D. Rockefeller, Defendant. Demurrer and Notice of Motion. William Hayward, United States Attorney, Attorney for Pltf.

United States District Court, Southern District of New York.

UNITED STATES OF AMERICA, Plaintiff,

against

JOHN D. ROCKEFELLER, Defendant.

SIR:

Please take notice that upon the complaint, amended answer and plaintiff's demurrer to the affirmative defenses therein, the undersigned will move this court at a stated term thereof for the hearing of motions to be held at the United States Court and Post Office Building, in the Borough of Manhattan, City, County and State of New York, on the 30th day of June, 1921, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard for an order granting to the defendant judgment on the pleadings and granting to defendant all such other and further relief as to the court may seem just and proper.

Yours, etc.,

MURRAY, PRENTICE & ALDRICH,
Attorneys for Defendant.

Office and P. O. Address, 37 Wall Street, New York City.

To Francis G. Caffey, Attorney for Plaintiff, U. S. P. O. Building, New York City.

United States District Court, Southern District of New York.

NEW YORK TRUST COMPANY and Others, as Executors of William L. Harkness,

against

WILLIAM H. EDWARDS, Collector.

UNITED STATES OF AMERICA

against

JOHN D. ROCKEFELLER.

These cases involve the legality of the income tax levied upon the plaintiff in the Harkness case and the defendant in the Rockefeller case. The question turns on the effect of certain corporate actions taken by the Prairie Oil & Gas Company and the Ohio Oil Company during the winter of 1914-15.

The Prairie Oil & Gas Company was the owner of pipe line property and oil property and for reasons not here relevant felt itself forced to separate these two into two separate corporations. In pursuance of that purpose it caused a corporation to be organized known as the The Prairie Pipe Line Company. It then made a contract with the pipe line company by which it was to convey all its pipe line property to it, in consideration of which the pipe line company promised to distribute all its own stock to the stockholders of the oil company in the same proportion as their existing holdings. This was carried out and the shares of the pipe line company so received by Harkness and Rockefeller were taxed as part of their income for the year in which the shares were issued.

66 The transaction in the case of the Ohio Oil Company was similar except that the agreement between it and the Illinois Pipe Line Company, which it organized, required the shares to be transferred direct to the oil company. However, the resolution of the directors of the oil company which accepted the contract, declared as a dividend all the shares to be received from the pipe line company and directed them to be distributed among its stockholders in accordance with their existing holdings. This agreement was carried out as well, and the shares so declared were also taxed as income against Harkness and Rockefeller as in the case of the Prairie Oil & Gas Company. In both cases the pipe line properties represented a surplus above the par value of the oil companies' stock; the conveyances therefore left the oil companies' capital unimpaired and required no reduction in their authorized issues.

Richard S. Holmes, Charles A. Mapes and Newton K. Fox for the United States.

George Wellwood Murray and Harrison Tweed for Harkness and Rockefeller.

LEARNED HAND, D. J.:

Neither the Prairie Gas & Oil Company nor the Ohio Oil Company for any moment of time owned the pipe line shares as free assets. This is very clear in the case of the Prairie Company, the transaction in which,—observing now the most scrupulous formality,—was this. The pipe line company offered to buy the oil company's pipe line assets for \$27,000,000,—adjusted to actual values,—and to give in payment its own shares to be directly distributed by the pipe line company pro rata among the oil company's stockholders. This offer the oil company accepted and the contract of January 21, 1915,

67 bound the buyer to distribute the stock, which it did. This was a contract made for the sole benefit of the oil company's stockholders and could probably have been directly enforced by them at law, *Hendrick v. Lindsay*, 93 U. S. 143, *National Bank v. Grand Lodge*, 98 U. S. 123, 124, (semble). Yet it was the only contract by which the oil company ever got any conceivable interest in the pipe line shares, and it gave that company no such interest. It had given away its property for a consideration moving directly to third persons.

In the case of the Ohio company, formally the contract bound the pipe line company to deliver its shares to the oil company and they thus would have become free assets, if there had been nothing more. However, in the very resolution of the oil company's board of directors by which the offer of the pipe line company was accepted the board declared a pro rata distribution of the pipe line shares among its own stockholders. Thus at the moment of concluding the contract by which alone the oil company got any interest in the shares, the property so acquired was declared as a dividend. That declaration gave the stockholders of the oil company an immediate vested right to the dividend so declared, *Staats v. Biograph Co.*, 235 Fed. R. 454, (C. C. A. 2nd), *Hopper v. Sage*, 112 N. Y. 530, *Raynolds v. Diamond Mills Paper Co.*, 69 N. J. Eq. 299, 300.

Therefore I think that *Peabody v. Eisner*, 247 U. S. 347, does not apply. I agree that had these shares been once free treasury assets it would be impossible to distinguish that case; the dividend would have been declared in specific property. But since the shares even in the case of the Ohio company were always the property of the stockholders the transactions must be taken as a whole, and the case determined from their effect upon the rights of the stockholders.

A dividend may be income to the stockholder though declared out of property which has long since become a part of the economic capital of the corporation, *Peabody v. Eisner*, supra, *Lynch v. Hornby*, 247 U. S. 339. True, it must not be a dividend in liquidation, *Lynch v. Turrish*, 247 U. S. 221, and perhaps it must be that account be from a corporate surplus, since otherwise it is hard to avoid regarding it as in liquidation. But it makes no difference that it distributes to the stockholder property which is not current profit, but the means of producing current profit. He must still pay an income tax upon it, though in his eyes it is a part of his capital. Therefore, in the cases at bar, the only question is of the completeness of severance of the property declared, i. e., the control of it acquired by the stockholder and lost by the corporation.

In *Eisner v. Macomber*, 252 U. S. 189, the case was of a mere stock dividend, which was held to be no more than new evidence of the stockholder's original ownership. Had the shares been without par value, that would have been literally the case, but they were not. The stock dividend did change the relation of the corporation and the stockholder to the surplus, by permanently impounding it, as it were, in the business, and giving the stockholder a right to insist upon it as an investment, should his fellows later wish to realize it as profit. Yet though he thus got, and the corporation lost, this element of control over the surplus so declared, it was not regarded as a severance of the property. So far, therefore, *Eisner v. Macomber*, supra, helps the taxpayers here; it shows that there may be some changes in the relation of the stockholders to the surplus which do not amount to the severance of income.

Nevertheless, the cases at bar go further than that case because in them the surplus was transferred to a new corporation altogether, and the question is whether that distinction changes the result. The taxpayers insist that if one looks at the very truth of

the matter, disregarding corporate forms, this is no difference at all. Although the argument is plausible, it still seems to me, that, even when viewed with the completest disregard of forms, the pipe line properties were completely severed from the oil companies and that the resulting shares were new property derived from the old shares.

A corporation, stripped of its fictitious personality, is an association of persons mutually agreed upon the execution of more or less definitely expressed purposes, publicly registered as the law requires. In the case of industrial corporations the personnel of the membership is an immaterial matter; the original members leave as they please and their substitutes enter merely by purchase. Even the number of the members changes from time to time. If so, it is the common purposes and their execution alone that determine the corporation and whatever substantially changes these changes the corporation itself, and the rights of its stockholders.

The result of the conveyance of the pipe line property was to put it under the control of an association committed exclusively to its operation as a separate enterprise from that of the oil company. Indeed, this severance in management was the sole motive of the transaction, unless there were a surreptitious agreement between the two groups which nullified the dissolution, which is not suggested. Accepting therefore, the taxpayers' argument that forms should be disregarded, the question is whether a group mutually agreeing

70 to manage the pipe line property independently of the oil property, is a different group from one agreeing to manage the pipe line and the oil property jointly. If the association does not depend upon the number or makeup of its membership but upon its charter, there can be no question that the difference between the two is substantial, because to conduct two businesses as a unity has practical results very different from conducting them in complete interdependence.

For illustration let me assume that the pipe line property had been conveyed in specie to the stockholders as co-owners and that they had incorporated for convenience. The original conveyance to them would have fallen directly within *Peabody v. Eisner*, supra, and *Lynch v. Hornby*, supra. It would have made no difference that they had later incorporated. Yet judged by results, this is exactly what happened; the pipe line was broken from an association committed to its joint management with the oil properties and consigned to an association which must manage it alone.

Or suppose that the *Prairie Pipe Line Company*, for example, had been a going concern with property of its own. Upon its acquisition of the pipe line and the issue of its new shares to the oil company stockholders, they would have an interest in an association operating two properties? These new shares would certainly be income in their hands to some extent. Would they be altogether income or only in the proportion to which by taking the new shares they gave up their rights in the old pipe line and got in exchange an interest in the original property of the *Prairie Pipe Line Company*? I scarcely think that anyone would urge that the new shares were not altogether income. Yet, if so, they would become such only because

the pipe line was being conducted in a new joint enterprise by the Prairie Pipe Line Company. Unquestionably the oil company stockholders would to some extent be still holding their old pipe lines and in the same relative proportions.

Or consider again the analogy of many of the dissolutions under the Sherman Act. These consisted in no greater separation than was accomplished here, yet it was thought enough to sever the enterprises and create new rights in the new corporations. Nor was it thought to be an answer that the stockholders started out the same. Because the members might join or leave the new group which conducted only a part of the old business, it was considered that the old group was effectively broken up.

Disregarding, therefore, all formalities, it appears to me, that the pipe-line properties were as effectually severed from the old corporations as though they had been distributed in kind. Indeed, the form adopted was the only practicable way in which they could be so distributed. It is only when one fastens one's attention upon the momentary identity of the two resulting groups that there can be any question of the result. But, as I have perhaps too often said, that identity is nothing unless its continuance is insured for the future by some common agreement between the two. I think that the new shares were income under the law and that the tax was legal.

Southern Pac. Co. v. Lowe, 247 U. S. 330, is not to the contrary; there the assets taken over had always been in the actual possession and under the control of the corporation. All the shares of the subsidiary were owned by it and the two were treated as merged. Nothing of the sort is true in the cases at bar. In Gulf Oil Com-

pany v. Lewellyn, 248 U. S. 71, it is indeed true that the property of the subsidiaries was not in the possession of the parent corporation, but it owned all their shares, and they were all "a single enterprise", controlled by it. In no sense did the pipe line companies and the oil companies here remain "a single enterprise". They might in fact be so conducted for a period, but if so, it would only be by the spontaneous assent of two independent groups of persons. If they remained in fact "a single enterprise", the whole plan was a mere cover.

Phellis v. U. S. Court of Claims, March, 1921, was a case where all the assets were sold to another corporation, which,—omitting irrelevant details,—gave its own shares, two for one, to the old stockholders and conveyed its debenture shares to the old company par for par. The result was that the old stockholders had their old shares now represented by the assets of the old corporation, i. e., the debenture shares in the new corporation, and double their original holdings in common shares of the new corporation. Whatever may be the proper answer to the case, with the greatest deference I cannot follow the reasoning of the learned judge, now urged upon me as authoritative. That reasoning is that because the joint value of the old and new shares after the transfer was the same as that of the old shares before, there can have been no income to the stockholder. It may of course happen that in the case of the dis-

tribution of the dividends, the value of the old shares does not fall as much as the value of the dividend, though generally the correspondence is pretty close. It does not make any difference for taxing purposes whether it does or not. The surplus declared as dividend may or may not be represented in the value of the shares, but even though it be fully represented, the dividend becomes income, as soon as the stockholder gets it. On his books it may appear

73 as a capital distribution, depending on whether he carries his investment at par. That is not to the point. It was not his property before, it has become such by the declaration of the dividend.

Demurrers sustained; judgment absolute on the demurrers, dismissing Harkness's complaint and awarding recovery against Rockefeller as prayed.

L. H.,
D. J.

August 3, 1921.

74 At a Stated Term of the United States District Court for the Southern District of New York Held in the United States Court and Post Office Building, Borough of Manhattan, City, County, and State of New York, on the 8th Day of September, 1921.

Present: Honorable Learned Hand, District Judge.

UNITED STATES OF AMERICA, Plaintiff,
against

JOHN D. ROCKEFELLER, Defendant.

Plaintiff herein having moved this Court for judgment upon the pleadings upon the complaint, the amended answer and the demurrer to the affirmative defense contained in said amended answer and defendant having made a cross-motion for judgment upon said pleadings and said motions having duly come on to be heard by this Court.

Now, after hearing Richard S. Holmes, Esq., Special Assistant United States Attorney for the Southern District of New York, of counsel for the plaintiff, in support of plaintiff's motion for judgment on the pleadings and in opposition to defendant's motion and after hearing George Welwood Murray, Esq., of counsel for the defendant in opposition to plaintiff's said motion and in support of defendant's said motion, and due deliberation having been had thereon, upon motion of William Haywood United States Attorney for the Southern District of New York, attorney for plaintiff, it is

75 Ordered that the motion of defendant for judgment upon the pleadings herein be and the same hereby is in all respects denied, and it is

Further ordered that the motion of the plaintiff for judgment upon the pleadings herein be and the same hereby is in all respects granted, and it is

Further ordered that the plaintiff herein have final judgment against the defendant for the sum of Two hundred ninety-two thousand and six hundred seventy-eight dollars and seventy-eight cents (\$292,678.78) with interest thereon at the rate of six per cent per annum from the 30th day of June, 1916 and for its costs to be taxed.

LEARNED HAND,
U. S. D. J.

76 United States District Court, Southern District of New York.

UNITED STATES OF AMERICA, Plaintiff,
against

JOHN D. ROCKEFELLER, Defendant.

Plaintiff herein having moved for judgment upon the pleadings upon the complaint, the amended answer and the plaintiff's demurrer to the affirmative defense contained in said amended answer and defendant having made a cross-motion for judgment upon said pleadings and said motions having duly come on to be heard before the Honorable Learned Hand, United States District Judge, at a stated term of this Court held on the 1st day of July, 1921, and Richard S. Holmes, Special Assistant United States Attorney for the Southern District of New York, of counsel for the plaintiff, having been heard in support of plaintiff's motion and in opposition to defendant's motion, and George Welwood Murray, Esq., of counsel for the defendant, having been heard in opposition to plaintiff's said motion and in support of defendant's said motion and due deliberation having been had thereon, and the Court having handed down its opinion on the 3rd day of August, 1921, granting plaintiff's said motion and denying defendant's said motion and an order having been duly made and entered on the 8th day of September, 1921, granting plaintiff's said motion and denying defendant's said motion and ordering

77 that plaintiff have final judgment against the defendant for the sum of Two hundred ninety-two thousand, six hundred seventy-eight and 78/100 dollars (\$292,678.78), with interest thereon at the rate of six per centum per annum from the 30th day of June, 1916, and for its costs to be taxed and the costs of the plaintiff having been taxed in the sum of Forty three and 37/100 dollars (\$43.37),

Now, on motion of William Hayward, United States Attorney for the Southern District of New York, attorney for plaintiff, it is

Adjudged that plaintiff have and recover of the defendant the sum of Two hundred ninety-two thousand, six hundred seventy-eight and 78/100 dollars (\$292,678.78), together with the sum of Ninety-one thousand, one hundred and sixty-nine and 44/100 dollars (\$91,169.44), interest thereon at the rate of six per centum per annum

from the 30th day of June, 1916, and the sum of Forty three and 37/100 dollars (\$43.37), costs of the plaintiff as taxed, in all the sum of Three Hundred and Eighty three thousand eight hundred and ninety one and 59/100 Dollars (\$383,891.59), and that plaintiff have execution against said defendant therefor.

Judgment signed this 9th day of September, 1921.

[SEAL.]

ALEX. GILCHRIST, JR.,
Clerk.

78 [Endorsed:] Court Docket No. —. Form No. 336. U. S. District Court, Southern District of New York. The United States of America, Plaintiff, versus John D. Rockefeller, Defendant. Judgment. William Hayward, United States Attorney, Attorney for Plaintiff.

79 United States District Court, Southern District of New York.

L. 24-77.

UNITED STATES OF AMERICA, Plaintiff,
against

JOHN D. ROCKEFELLER, Defendant.

Petition for Writ of Error.

To the United States Supreme Court:

The above named John D. Rockefeller, now appears before this Court and complains that in the records and proceedings had in this cause, and also in the rendition of the judgment in the above entitled cause in the United States District Court, for the Southern District of New York, on the 9th day of September, 1921, manifest error hath happened to the great damage of said defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore the said defendant hereby prays for the allowance of a writ of error, for an order fixing the amount of the bond for a supersedeas in the said cause, and for such other order and process as may cause the aforementioned errors and judgment to be corrected by said United States Supreme Court.

Dated New York, September 10th, 1921.

GEORGE WELWOOD MURRAY,
Attorney for Defendant.

37 Wall Street, New York, N. Y.

80 [Endorsed:] L. 24-77. United States District Court, Southern District of New York. United States of America, Plaintiff, against John D. Rockefeller, Defendant. Petition for writ of error. Murray, Prentice & Aldrich, Attorneys for defendant, 37 Wall Street, New York.

- 81 At a Stated Term of the District Court of the United States Held in and for the Southern District of New York, at the Courthouse, in the U. S. Post Office, at the Courthouse Building, in the Borough of Manhattan, City of New York, on the 10th Day of September, 1921.

Present: Hon. Julius M. Mayer, U. S. District Judge.

THE UNITED STATES OF AMERICA, Plaintiff,
against

JOHN D. ROCKEFELLER, Defendant.

The above named defendant, John D. Rockefeller, having filed a petition for a writ of error and an assignment of errors in the above entitled action, and upon filing a bond in the sum of Two hundred & fifty dollars, to be approved by the Court, it is now

Ordered that a writ of error be and the same hereby is allowed to have reviewed in the United States Supreme Court the record and proceedings and the judgment heretofore and on the 9th day of September, 1921, rendered in this Court in this cause and it is

Further ordered that the said bond shall operate as a supersedeas bond, provided, however, that, if required by the plaintiff, a further bond in a sum not to exceed the amount of said judgment shall be given.

J. M. MAYER,
U. S. District Judge.

- 82 [Endorsed:] L. 24-77. United States District Court, Southern District of New York. The United States of America, Plaintiff, against John D. Rockefeller, Defendant. Order Allowing Writ of Error. Murray, Prentice & Aldrich, Attorneys for Defendant, 37 Wall Street, New York.

- 83 United States District Court, Southern District of New York.

UNITED STATES OF AMERICA, Plaintiff,
against

JOHN D. ROCKEFELLER, Defendant.

Assignment of Errors.

Now comes John D. Rockefeller, the defendant herein, and assigns error in the decision of the United States District Court for the Southern District of New York as follows:

First. The Court erred in sustaining the demurrer interposed by the plaintiff to the affirmative defense set forth in the amended answer herein, in sustaining the plaintiff's motion for judgment on the pleadings, in overruling the defendant's cross-motion for judgment

on the pleadings, and in directing that final judgment should be entered in favor of the plaintiff.

Second. The Court erred in holding that Section 2 of the Act of Congress of October 3, 1913, entitled "An Act to reduce tariff duties and to provide revenue for the Government and for other purposes," upon which the alleged cause of action set forth in the complaint herein was based, is not in violation of the provision of Article I, Section 2, Clause 3, of the Constitution of the United States to the effect that "direct taxes shall be apportioned among the several States."

84 Third. The Court erred in holding that Section 2 of said Act of Congress of October 3, 1913, upon which the alleged cause of action set forth in the complaint herein was based, is not in violation of the provision of Article I, Section 9, Clause 4, of the Constitution of the United States, to the effect that "no Capitation, or other direct Tax shall be laid, unless in Proportion to the Census or Enumeration hereinbefore directed to be taken."

Fourth. The Court erred in holding that the shares of stock of The Prairie Pipe Line Company and The Illinois Pipe Line Company received by the defendant as stated in the affirmative defense set forth in the amended answer herein constituted income and were subject to taxation as income within the meaning of the Sixteenth Amendment to the Constitution of the United States, which provides that "Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

Fifth. The Court erred in holding that said shares of stock received by the defendant as stated in the affirmative defense set forth in the amended answer herein were subject to taxation under Section 2 of said Act of Congress of October 3, 1913.

Sixth. The Court erred in holding that the difference between the market value of said shares of stock received by the defendant as stated in the affirmative defense set forth in the amended answer herein and the amount by which the surpluses of The Prairie Oil & Gas Company and The Ohio Oil Company were reduced by reason

85 of the transfer of the pipe line properties to The Prairie Pipe Line Company and The Illinois Pipe Line Company constituted income and was subject to taxation as income within the meaning of the Sixteenth Amendment to the Constitution of the United States.

Seventh. The Court erred in holding that the difference between the market value of said shares of stock received by the defendant as stated in the affirmative defense set forth in the amended answer herein and the amount by which the surpluses of The Prairie Oil & Gas Company and The Ohio Oil Company were reduced by reason of the transfer of the pipe line properties to The Prairie Pipe Line Company and The Illinois Pipe Line Company was subject to taxation under Section 2 of said Act of Congress of October 3, 1913.

Eighth. The Court erred in holding that that proportion of the market value of said shares of stock received by the defendant as stated in the affirmative defense set forth in the amended answer herein which the value of the pipe line properties acquired out of the proceeds of the sale of stock and bonds and out of earnings accumulated prior to March 1, 1913, bears to the total market value thereof, constituted income and was subject to taxation within the meaning of the Sixteenth Amendment to the Constitution of the United States.

Ninth. The Court erred in holding that that proportion of the market value of said shares of stock received by the defendant as stated in the affirmative defense set forth in the amended answer herein which the value of the pipe line properties acquired out of the proceeds of the sale of stock and bonds and out of earnings
86 accumulated prior to March 1, 1913, bears to the total market value thereof, was subject to taxation under Section 2 of said Act of Congress of October 3, 1913.

Tenth. The Court erred in holding that the difference to the stockholders of a corporation is substantial when property formerly held by that corporation is transferred to a newly organized corporation of which that property constitutes the sole assets and all and only the stock of which is received by such stockholders.

Eleventh. The Court erred in holding that there is a substantial difference between the transfer of the surplus of a corporation to capital account and the issue of a stock dividend on the one hand, and, on the other hand, the transfer by a corporation of a part of its property to a newly organized corporation of which that property constitutes the only assets and the distribution to the stockholders of the original corporation of all and only the shares of stock of the newly organized corporation.

Twelfth. The Court erred in holding that the distribution of said shares of stock received by the defendant as stated in the affirmative defense set forth in the amended answer herein did not constitute a true stock dividend within the decisions of the Supreme Court of the United States in *Towne v. Eisner*, 245 U. S. 418, and *Eisner v. Macomber*, 252 U. S. 189.

Thirteenth. The Court erred in holding that the distribution of said shares of stock received by the defendant as stated in the affirmative defense set forth in the amended answer herein did not
87 constitute a dividend in liquidation within the decision of the Supreme Court of the United States in *Lynch v. Turrish*, 247 U. S. 221.

Fourteenth. The Court erred in holding that the control of the pipe line properties was acquired by the stockholders of The Prairie Oil & Gas Company and The Ohio Oil Company within the meaning of the decision of the United States Supreme Court in *Eisner v. Macomber*, 252 U. S. 189.

Fifteenth. The Court erred in holding that the pipe line properties were transferred to the separate use and benefit or the individual ownership of the stockholders within the meaning of the decision of the United States Supreme Court in *Eisner v. Macomber*, 252 U. S. 189.

Dated: September 9, 1921.

MURRAY, PRENTICE & ALDRICH,
Attorneys for Plaintiffs.

37 Wall Street, New York, N. Y.

88 [Endorsed:] L. 24-77. United States District Court, Southern District of New York. United States of America, Plaintiff, against John D. Rockefeller, Defendant. Assignment of Errors. Murray, Prentice & Aldrich, Attorneys for Defendant, 37 Wall Street, New York.

89 District Court of the United States of America for the Southern District of New York, in the Second Circuit.

UNITED STATES OF AMERICA, Plaintiff, Respondent,
against

JOHN D. ROCKEFELLER, Defendant, Appellant.

Bond on Appeal.

Know all men by these presents, That John D. Rockefeller, as principal, and National Surety Company, a corporation under the laws of the State of New York, with its principal place of business at No. 115 Broadway, in the City, County and State of New York, as surety, are held and firmly bound unto the above named United States of America, in the sum of Two Hundred and Fifty (\$250) Dollars to be paid to the said United States of America, for the payment of which well and truly to be made, said principal and surety bind themselves, their heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. Sealed and dated the 9th day of September, 1921.

Whereas, the above named John D. Rockefeller has prosecuted a writ of error to the United States Supreme Court of Washington, D. C., to reverse the judgment rendered in the above entitled suit, by a Judge of the District Court of the United States for the Southern District of New York.

Now, therefore, the condition of this obligation is such, that if the above named John D. Rockefeller shall prosecute said writ to effect, and answer all damages and costs if he fail to make said writ good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JOHN D. ROCKEFELLER.

NATIONAL SURETY COMPANY,

By H. E. EMMETT,

Resident Vice-President.

Attest:

N. V. TYNAN,

Resident Assistant Secretary.

STATE OF NEW YORK,

County of New York, ss:

On this 10 day of September, 1921, before me personally came the within named John D. Rockefeller to me known, and known to me to be the individual described in and who executed the within bond and he acknowledged that he executed the same.

HARRY P. FISH, [SEAL.]
Notary Public, Westchester Co.

Ctf. filed N. Y. Co. Cl. #233, Reg. 3145.
Commission expires Mar. 30, 1923.

[Endorsed:] L. 24-77. District Court of United States, Southern District of New York. United States of America, Plaintiff Respondent, against John D. Rockefeller, Defendant Appellant. Bond on Appeal. Surety, National Surety Company. I approve of the *written* Bond, and of the sufficiency of the surety thereon. C. M. Hough, U. S. C. J. 9/13/21.

Affidavit, Acknowledgment, and Justification by Guarantee or Surety Company.

STATE OF NEW YORK,

County of New York, ss:

On this 9th day of September, 1921, before me personally came H. E. Emmett, known to me to be the Resident Vice-President of National Surety Company, the corporation described in and which executed the foregoing bond of John D. Rockefeller as surety and who, being by me duly sworn, did depose and say that he resides in the City of New York, State of New York; that he is the Resident Vice-President of said Company, and knows the corporate seal thereof; that the said National Surety Company is duly incorporated under the laws of the State of New York, that said Company has complied with the provisions of the Act of Congress of August 13, 1894, that the seal affixed to the within Bond of John D. Rockefeller is the corporate seal of said National Surety Company, and was thereto affixed by authority of the Board of Directors of said Company, and that he signed his name thereto by like authority as Resident Vice-President of said Company, and that he is acquainted with N. V. Tynan and knows him to be the Resident Assistant Secretary of said Company; and that the signature of said N. V. Tynan subscribed to said Bond is in the genuine handwriting of said N. V. Tynan, and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent; and that the assets of said Company, unencumbered and liable to execution exceed its debts and liabilities of every nature whatsoever, by more than the sum of Ten Million dollars.

H. E. EMMETT,
(Deponent's Signature.)

Signed, sworn to, and acknowledged before me this 9 day of September, 1921.

W. E. FIELDS,
Notary Public, etc.

90

L 24-77.

Writ of Error.

UNITED STATES OF AMERICA:

The President of United States of America to the Judges of the District Court of the United States for the Southern District of New York, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the District Court, before you, or some of you, between United States of America, plaintiff, against John D. Rockefeller, defendant, manifest error hath happened, to the great damage of John D. Rockefeller, defendant as aforesaid, We being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in its behalf, Do Command You, if judgment be therein given that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to The Supreme Court of the United States, in the City of Washington, District of Columbia, together with this writ, so that you have the same at the said place, on the 8th day of October, 1921, that the record and proceedings aforesaid being inspected, said Supreme Court of the United States may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable William Howard Taft, Chief Justice of the United States, this 10th day of Sept. in the year of our Lord
91 one thousand nine hundred and twenty-one and of the Independence of the United States the one hundred and forty-sixth.

[SEAL.]

ALEX. GILCHRIST, JR.,
Clerk of the District Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.

J. M. MAYER,

U. S. District Judge.

92 [Endorsed:] L 24-77. United States District Court, Southern District of New York. United States of America, Plaintiff, against John D. Rockefeller, Defendant. Writ of Error. Murray, Prentice & Aldrich, Attorneys for Defendant, 37 Wall Street, New York. Filed Sept. 10th, 1921.

By the Honorable Julius M. Mayer, One of the Judges of the District Court of the United States for the Southern District of New York, in the Second Circuit, to the United States of America, Greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court to be holden in the City of Washington, on the 8th day of October 1921, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Southern District of New York, wherein John D. Rockefeller is plaintiff-in-error and you are defendant-in-error, to show cause, if any there be, why the proceedings and judgment in the said writ of error mentioned, should not be corrected and why speedy justice should not be done in that behalf.

Given under my hand in the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 10th day of September, in the year of our Lord one thousand nine hundred and twenty-one and of the Independence of the United States the one hundred and forty-sixth.

J. M. MAYER,

*Judge of the District Court of the United
States for the Southern District of
New York, Second Circuit.*

[Endorsed:] United States District Court, Southern District of New York. The United States of America, Plaintiff, against John D. Rockefeller, Defendant. Citation on Appeal. Murray, Prentice & Aldrich, 37 Wall Street, New York.

Stipulation on Appeal Record.

United States District Court, Southern District of New York.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

JOHN D. ROCKEFELLER, Defendant.

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated — —, — —.

WM. HAYWARD,

U. S. Attorney, Attorney for Plaintiff.
MURRAY, PRENTICE & ALDRICH,
Attorneys for Defendant.

[Endorsed:] United States District Court, Southern District of New York. The United States of America, Plaintiff, vs. John D. Rockefeller, Defendant. Stipulation as to Correctness of Appeal Record.

96 UNITED STATES OF AMERICA,
Southern District of New York, ss:

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

JOHN D. ROCKEFELLER, Defendant.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this thirteenth day of September in the year of our Lord one thousand nine hundred and twenty-one and of the Independence of the said United States the one hundred and forty-sixth.

[Seal of the District Court of the United States, Southern District of N. Y.]

ALEX. GILCHRIST, Jr.,
Clerk.

97 [Endorsed:] United States District Court, Southern District of New York. The United States of America, Plaintiff, against John D. Rockefeller, Defendant. Certified Copies of Papers on Appeal. Murray, Prentice & Aldrich, Attorneys for Defendant, 37 Wall Street, New York.

Endorsed on cover: File No. 28,490. S. New York D. C. U. S. Term No. 535. John D. Rockefeller, plaintiff in error, vs. The United States of America. Filed September 15th, 1921. File No. 28,490.

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